HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 17768 OF 2006

Between:

Union of India, rep by

The Chief Post Master General,

A.P.Circle, Hyderabad

& others.

... Petitioners

AND

N.Surendra Sai

And two others.

... Respondents

: ORDER :

Counsel for the petitioner : Sri V.Vinod Kumar

Counsel for respondent No.1: Shri N.Ramakrishna Pramahansa

Dated: 15th November, 2006

Per C.V.Nagarjuna Reddy, J

This is a petition for quashing order dated 28.09.2005 passed by District Consumer Forum-II, Hyderabad (for short 'the District Forum') in C.D.No.409 of 2005 and order dated 21.04.2006 passed by Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short 'the State Commission') in F.A.No.1779 of 2005.

The first respondent in this petition filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (for short 'the Act') with the allegation that his mother late Smt. N.Kamala and his grand mother Smt.S.Venkata Subbamma during their life time deposited a sum of Rs.18,000/- with the Petitioner No.2 under Monthly Income Scheme (MIS) and got the MIS transferred to the petitioner No.3 who registered the same as MIS No.700014. After the death of the first respondent's mother on 9.9.1998, his grand mother sent an application in form SB-55 duly attested by two witnesses on 29.12.1998 declaring the first respondent as the nominee in respect of MIS 700014. The third appellant to whom the said application was sent, acknowledged the receipt of the same and affixed dated stamp of its office on the duplicate copy and registered the first respondent as the nominee. The first respondent's grandmother also died on 7.6.2002. Another account bearing

No.MIS 700013 was also opened by the first respondent's mother and grandmother along with MIS 700014 on 17.5.1995. The first respondent averred that after the death of his grandmother, he had submitted application dated 26.12.2002 for settlement of both the accounts and enclosed the necessary documents i.e. passbook, copies of SB-55 forms and the death certificates of the first respondent's mother and grandmother. The second petitioner, however repudiated the first respondent's claim in respect of MIS 700014 through his letter dated 02.01.2004 by claiming that his nomination by the grandmother had not been properly attested. The first respondent contended before the District Forum that while the second petitioner accepted the claim made in respect of MIS Account No.700013 there was no justification to repudiate his claim made in respect of MIS 700014 as he happened to be the nominee in respect of both the accounts, having been duly nominated by his grandmother.

The petitioners filed a counter affidavit in the said complaint wherein they sought to justify the rejection of the first respondent's claim for payment of the amount under MIS 700014 on the sole ground that there was no nomination registered in the said account and that even though the second petitioner addressed letter dated 3.1.2004 to the first respondent requesting him to resubmit the claim on the suitable/prescribed application form under Rule-87 (1) of the Post Office Savings Bank General Rules, 1981, the latter did not give any response. In the said counter affidavit it was admitted that the first respondent is entitled to a sum of Rs.22,530/- under three heads, namely, Rs.18,000/- towards principal amount, Rs.2,730/- towards interest due for payment from 4.1.2000 to 17.5.2001 and Rs.1,800/- towards bonus.

The District Forum, after considering the rival pleadings and scrutinizing the record, allowed the complaint by holding that there was deficiency in service. Accordingly, the District Forum directed the petitioners to jointly and severely pay a sum of Rs.22,530/- along with interest @ 12% per annum from 17.5.2001 till the date of payment, besides awarding Rs.2,000/- as compensation and Rs.1,000/- towards costs. The appeal preferred by the petitioners was dismissed by the State Commission vide its order dated 21.04.2006.

Sri V.Vinod Kumar, learned counsel for the petitioners argued that the order passed by the District Forum should be declared as vitiated by an error of law because while recording a finding that there was deficiency in service, the learned Members of the Forum omitted to consider the fact that the first respondent had not been duly nominated by his mother and grandmother in respect of Account No. MIS-700014. Learned counsel emphasized that in the absence of a valid nomination, the petitioners could not have been burdened with the liability of making payment in respect of account in question.

Sri N.Ramakrishna Paramahansa, learned counsel appearing for the first respondent argued that the findings recorded by the District Forum and the State Commission are based on proper appreciation of evidence produced by the first respondent and the same should not be upset by the High Court in exercise of its power under Article 226 of the Constitution of India. He further argued that the case set up by the petitioners in the counter filed before the District Forum was based on a patently false assertion that there was no nomination of the first respondent in respect of account No. MIS-700014.

We have given our thoughtful consideration to the respective submissions and carefully perused the record including the original file produced by Shri V. Vinod Kumar, pursuant to the Court's order dated 13.11.2006.

The MIS account scheme is governed by the Post Office Saving Bank General Rules, 1981 (for short "the Rules") framed by Government of India under the Government Savings Bank Act, 1873. Under Rule 87 (1) of the Rules any claim made to the amount of Savings Bank Account standing in the name of a deceased depositor may be allowed on the basis of; a) Nomination, b) Legal evidence, and c) at the discretion of sanctioning authority up to Rs.1,00,000/-. If the claim exceeds Rs.1,00,000/- the claimant should be advised to obtain a Succession Certificate from a competent Court of Law or produce the probate of a will or letter of administration of the estates of the deceased. Rule 87(2) which is very apt for the present purpose reads as under:

> "(i) ***Account in respect of which nomination exists:*** In case the deceased depositor of the savings account has made a nomination and registered the same with the post office, the nominee/nominees of the deceased depositor are entitled to receive the amount of credit of the deceased depositor immediagtely after the death, irrespective of the amount, without production of legal evidence.
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> (ii) The claimant should be advised to submit the claim in the form given below along with proof of death of the deceased depositor and that of any nominee who has died. If there are two or more surviving nominees, they may claim jointly or separately."

The above re-produced provision makes it clear that where the deceased depositor of the Savings account made a nomination and registered the same with the post office, the nominee/nominees of the deceased depositor are entitled to receive the amount immediately after death of the depositor. A reading of the original application made by Smt. Sanka Venkata Subbamma and Smt.N.Kamala, the grandmother and mother respectively of the first respondent for opening MIS account shows that against the column "Names and Addresses", the names of Smt. Sanka Venkata Subbamma and Smt. N.Kamala with address of Gangannapet, Tenali were shown. The name of G.Appi Reddy, NSC Agent was mentioned against the column of introducer's name. Under the column "Name and Addresses of Nominee(s)", the name "N.Surender Sai, Gangannapet, Tenali" (the first respondent) was written and the relationship is shown as "Son". Curiously the entry recorded in the column of nominee is struck off with two vertical lines albeit without any enquiry. It is thus evident that some official/officer of the department which had the custody of the file deliberately scored out the entry in the column relating to nominee. This must have been done with the sole object of defeating the legitimate claim of the first respondent.

After going through the file produced by Shri Vinod Kumar, we asked him to explain as to why the entry depicted in the name of the first respondent as nominee of the account holders has been scored off, but he could not give any

reply. From what we have observed and noted above, it is crystal clear that the claim of the first respondent fell within the ambit of Rule 87(2) of the Rules and the second petitioner illegally rejected his claim. It is most unfortunate that the petitioners omitted to produce the original records before the District Forum and the State Commission and persistently maintained that there was no valid nomination in favour of the first respondent. Such a conduct on the part of the petitioners cannot but be described as reprehensible.

On the basis of the above discussion, we hold that the orders under challenge do not suffer from any legal error warranting interference by this Court.

In the result, the writ petition is dismissed and interim order dated 22.09.2006 is vacated. The petitioners shall pay cost of Rs.10,000/- to the first respondent. The needful be done within a period of two months from the date of receipt of copy of this order by Chief Post Master General, A.P. Circle, Hyderabad. The latter shall recover the amount of cost from the salary of officer/official who may be found guilty of having made interpolation in the entry relating to the nomination of the first respondent.

As a sequel to dismissal of the writ petition, W.P.M.P.No.22287 of 2006 filed by the petitioners for interim relief is also dismissed.

C.V.NAGARJUNA REDDY,J

G.S.SINGHVI, CJ

Date: 15.11.2006

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